

109TH CONGRESS  
1ST SESSION

# H. R. 2401

To modify the antitrust exemption applicable to the business of insurance.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2005

Mr. DEFAZIO (for himself, Mr. BAIRD, Mrs. CHRISTENSEN, Mr. CROWLEY, Mr. HINCHEY, and Mr. TAYLOR of Mississippi) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the antitrust exemption applicable to the business of insurance.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Insurance Competitive  
5       Pricing Act of 2005”.

6       **SEC. 2. AMENDMENTS.**

7       Section 2 of the Act of March 9, 1945 (59 Stat. 34;  
8       15 U.S.C. 1012), commonly known as the McCarran-Fer-  
9       guson Act, is amended—

10               (1) in subsection (b)—

1 (A) by striking “: Provided, That after  
2 June 30, 1948,” and inserting “, except that”,

3 (B) by inserting “section 5 of” after  
4 “Clayton Act, and”,

5 (C) by inserting “as such section 5 relates  
6 to monopolies, attempts to monopolize, and un-  
7 lawful restraints of trade,” after “Commission  
8 Act, as amended,” and

9 (D) by striking “that such business” and  
10 all that follows through “law.” and inserting  
11 the following:

12 “that—

13 “(1) such business is not regulated by State  
14 law; or

15 “(2) the conduct of a person engaged in such  
16 business involves—

17 “(A) price fixing;

18 “(B) allocating with a competitor a geo-  
19 graphical area in which, or persons to whom,  
20 insurance will be offered for sale;

21 “(C) unlawfully tying the sale or purchase  
22 of—

23 “(i) one type of insurance to the sale  
24 or purchase of another type of insurance;  
25 or

1 “(ii) any type of insurance to the sale  
2 or purchase of any other service or prod-  
3 uct; or

4 “(D) monopolizing, or attempting to mo-  
5 nopolize, any part of the business of insur-  
6 ance.”, and

7 (2) by adding at the end the following:

8 “(c) The conduct referred to in subsection (b)(2)  
9 shall not include making a contract, or engaging in a com-  
10 bination or conspiracy—

11 “(1) to collect, compile, or disseminate histor-  
12 ical loss data;

13 “(2) to determine a loss development factor ap-  
14 plicable to historical loss data; or

15 “(3) to perform actuarial services if such con-  
16 tract, combination, or conspiracy does not involve a  
17 restraint of trade.

18 “(d) The conduct referred to in subsection (b)(2)  
19 shall not include making a contract, or engaging in a com-  
20 bination or conspiracy, to determine a trend factor—

21 “(1) during the transition period; and

22 “(2) in the case of a person with a policy-  
23 holders’ surplus of less than \$10,000,000 or a pol-  
24 icyholders’ surplus of less than \$100,000,000 and  
25 whose direct written insurance premiums for the line

1 of business in question constitutes less than a 2.5  
2 percent share of the total market in the most re-  
3 cently ended 1-year period in every jurisdiction in  
4 which the person is engaged in the business of insur-  
5 ance and which is not more than 50 percent owned  
6 or controlled by another person engaged in the busi-  
7 ness of insurance and which does not, together with  
8 other persons engaging in such conduct have, in the  
9 aggregate, in the then most recently completed 1-  
10 year period, 20 percent or more of the relevant mar-  
11 ket in the line of insurance involved.

12 “(e) For purposes of this section—

13 “(1) the term ‘historical loss data’ means infor-  
14 mation respecting claims paid, or reserves held for  
15 claims reported, by any person engaged in the busi-  
16 ness of insurance;

17 “(2) the term ‘loss development factor’ means  
18 an adjustment to be made to reserves held for losses  
19 incurred for claims reported by any person engaged  
20 in the business of insurance, for the purpose of  
21 bringing such reserves to an ultimate paid basis;

22 “(3) the term ‘transition period’ means—

23 “(A) the 4-year period beginning on the ef-  
24 fective date of the Insurance Competitive Pric-  
25 ing Act of 2005, in the case of a person—

1 “(i) that wrote insurance having an  
2 aggregate amount of annual premiums less  
3 than \$20,000,000; and

4 “(ii) not more than 50 percent of  
5 which was owned or controlled by another  
6 person engaged in the business of insur-  
7 ance;

8 in the then most recently ended 1-year period;  
9 or

10 “(B) the 2-year period beginning on such  
11 effective date, in the case of any person to  
12 which subparagraph (A) does not apply; and

13 “(4) the term ‘trend factor’ means an adjust-  
14 ment to be made to losses incurred for claims re-  
15 ported by any person engaged in the business of in-  
16 surance, to reflect a change in inflation or any other  
17 change in the estimated loss costs incurred by per-  
18 sons engaged in the business of insurance.”.

19 **SEC. 3. EFFECTIVE DATE.**

20 This Act shall take effect 1 year after the date of  
21 the enactment of this Act.

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